

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

DYLAN FRANKLIN SHIRES,

Defendant and Appellant.

C068007

(Super. Ct. Nos.
NCR78303, NCR76833)

Defendant Dylan Franklin Shires was convicted by guilty pleas of second degree murder and battery with serious bodily injury. The trial court sentenced him to 40 years to life plus a consecutive term of nine years.

Defendant's ensuing appeal is subject to the principles of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *People v. Kelly* (2006) 40 Cal.4th 106, 110. In accordance with the latter, we will provide a summary of the offenses and the proceedings in the trial court.

Case No. NCR76833

On January 27, 2009, four masked men entered the home of Clarence Puckett and his wife, Paula Puckett. The Pucketts had medical marijuana recommendations. The robbers demanded to know where they kept their marijuana. The robbers took several gallon-sized bags after Paula told them. The robbers then asked for money but Clarence said there was none. A struggle followed, and Clarence was killed by a single gunshot wound to the head.

Defendant was one of the robbers. He was armed with a borrowed shotgun during the robbery. When borrowing the shotgun, defendant said he wanted "to be a gang banger." Defendant associated with members of the "NVL" gang and had two gang-related tattoos.

In case No. NCR76833, defendant pleaded guilty to second degree murder and admitted the special allegations of firearm discharge causing death with gang benefit and status as a minor (16 years old). (Pen. Code, §§ 187, subd. (a), 186.22, subd. (b)(1)(C), 12022.53, subds. (d), (e)(1);¹ Welf. & Inst. Code, § 707, subd. (d)(1).)

Case No. NCR78303

In late November 2009, while in jail awaiting trial for the robbery-murder charges, defendant quarreled with another inmate, Thomas Martin. Defendant went to Martin's cell the following

¹ Undesignated statutory references are to the Penal Code in effect at the time of defendant's sentencing on April 11, 2011.

day to confront him about the quarrel. Defendant provoked Martin to a fight and punched him several times. When Martin fell to the floor, defendant repeatedly stomped on Martin's head. Martin suffered brain damage from defendant's assault.

In case No. NCR78303, defendant pleaded guilty to assault by means likely to produce great bodily injury with a paralysis and/or brain injury enhancement. (§§ 245, subd. (a)(1), 12022.7, subd. (b).)

Sentencing

The trial court sentenced defendant to 40 years to life in case No. NCR76833 plus a consecutive term of nine years in case No. NCR78303. The court imposed various fines and fees, and awarded 132 days of presentence credit (132 custody and zero conduct pursuant to §§ 2933.1, subd. (c), 2933.2) in case No. NCR76833, and 529 days of presentence credit (460 actual and 69 conduct pursuant to § 2933.1, subd. (c)) in case No. NCR78303.

Defendant appeals. He did not obtain a certificate of probable cause.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed,

and we have received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

_____, BUTZ, J.

We concur:

_____, HULL, Acting P. J.

_____, MAURO, J.